



**CONGRESSMAN FRANK'S TESTIMONY ON THE EMPLOYMENT NON-DISCRIMINATION ACT
THE HOUSE EDUCATION AND LABOR COMMITTEE
SEPTEMBER 23, 2009**

I want to express to you, Mr. Chairman, and to Mr. Andrews, the Chairman of the Subcommittee, my deep appreciation for the extraordinary efforts you have taken - thoughtful and sensible and sensitive on this issue over the years.

I find it hard to argue *for* legislation that bans discrimination. I guess in this one, my instincts ought to be a counter-puncher. It just seems to me so self-evident, that an American who would like to work, and support himself or herself, ought to be allowed to do that judged solely on his or her work ethic and talents that I don't know what more to say.

Sometimes, we've been accused, those of us who are gay or lesbian, of having a 'radical agenda'. As I look at radicalism through history, trying to get a job or join the military have not been the hallmarks of radicalism. That's what we're talking about today. Now, this House, last session under the leadership of you Mr. Chairman, and Mr. Chairman of the Subcommittee, passed this bill by a large majority including a number of Republicans, and I was very pleased to see that. There is an added element today, the transgender element, so I just want to address that, but I want to first respond to the comments of the Ranking Member. And those are perfectly reasonable, obviously. And I have found that this is often the case, that people say, "you know, when it comes to protecting a group against discrimination, I harbor no ill-will for them, but I worry about disruptive effects."

The one thing I would say is this. I was first elected to a legislature in 1972 in Massachusetts. In the ensuing years I have worked on legislation to protect people against religious discrimination, discrimination based on race, discrimination based on ethnicity, discrimination based on gender, discrimination based on the condition of disability, and of age. I must say that at the time that I worked on all those, I was not the beneficiary of any of them. I caught up on the age part. In every single case, and I remember when we re-enacted the legislation, with you playing a major role Mr. Chairman, to say that you had to have a particular obligation not to discriminate if you took Federal funds.

And in every single case, when we have voted against discrimination, the arguments have been similar: "it's not that we dislike these people," (in our case there's a few that don't say that), but in general the argument is, from thoughtful people, "it will be too disruptive."

The point I want to make is this: they always, the opponents of discrimination legislation, predict disruption and it never happens. The secret about anti-discrimination legislation is that it becomes very hard to enforce. They have historically been under-enforced rather than over-enforced. The gentleman sort of raised the reasonable question, "but this could lead to litigation." But while most states in this country do not offer that protection to people like me, and my colleague from Wisconsin and our colleague from Colorado, we're subject to being fired because of our personal characteristics here, there is no history of litigation of the sort that's conjured up. There is no negative history.

This isn't the first time this has happened. The gentlewoman from Wisconsin's state did it first, my state did it second. These laws have been on the books for well over 20 years in places. There are many states that have them. There is no record of this being disruptive. This simply is a non-existent fear. And I have to say it is a rare instance of the media not wanting to contradict politicians. They generally love to show that we haven't been telling the truth. I wish they would go back and look at anti-discrimination based on age, and race, and disability, and gender, and religion, et cetera et cetera, and look at the predictions that were made of chaos, and look at the total absence of chaos that ensued. Because that clearly is the case.

Finally I just want to address the issue of transgender, which was very controversial last time. I didn't think we had the votes. I hope we will now. I remember when I first introduced legislation to prevent discrimination in employment based on sexual orientation thirty-seven years ago, many of my colleagues in the legislature were troubled by it and made uneasy by it - it was a new thing to them. Yes, I believe the issue of transgender is a new one to people, it takes time for people to get used to it; but there is no more reason to discriminate against someone because he or she is transgender than because he or she is gay or lesbian or in any other categories.

We are not asking that anybody get a pass, there is no affirmative action in this bill. To the extent that the transgender issue raises a couple of special issues, about changing clothes facilities, the bill addresses them. And I have to say, there are some people who have expressed some puzzlement about people who are transgender. I understand that this is a concept that for some people it's kind of, it's new. But I can guarantee them, as my colleagues in the legislature thirty-seven years ago got to know gay people and talk to us, the fear that there was something so troubling, that went away. The same happens. It has certainly been our experience. You know, the transgender community was a hidden community for years, because of the degree of prejudice they face. That barrier has dropped, and they deserve a great deal of credit, the members of that community, for getting out there and introducing themselves and talking to people.

Let me just say to my colleagues, there's nothing to be afraid of. These are our fellow human beings. They aren't asking you for anything other, in this bill, for the right to earn a living. Can't you give them that? If you don't like them, you don't want to be friends, I think you're missing on something, but that's your choice. But how can we, as people who make the laws in this wonderful country, under our great constitution, say to one small group of our fellow citizens, "you know, there's something about you that some people don't like, so *you* are not eligible for work, *you* can be fired, *you* can't get a promotion." I can not understand why anybody would want to say that to a group of our fellow citizens. And that's all that this bill does. Thank you Mr. Chairman.